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E-FILED: March 25, 2020

6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF NEVADA**

8 **In Re:**

9 **STEVE PANDI,**

10 **Debtor(s).**

11 **Case No: BK-S-20-10243-BTB**
Chapter 7

12 **Hearing Date: 5/21/2020**
Hearing Time: 10:00 a.m.

13 **MOTION TO DETERMINE BAVARIAN MOTORS LTD.'S WILLFUL VIOLATION OF**
THE AUTOMATIC STAY AND REQUEST TO RECOVER PUNITIVE DAMAGES,
ATTORNEY'S FEES AND SANCTIONS

14 STEVE PANDI ("Debtor"), by and through his attorneys Haines & Krieger, LLC, here
15 moves this Honorable Court for an order determining Bavarian Motors Ltd. ("Bavarian") willful
16 violation of the automatic stay and for entry of an award for actual damages, attorney's fees and
17 costs and punitive damages in favor of Debtor ("Motion"). This Motion is based upon Debtor's
18 Declaration in support of the Motion and the following Memorandum of Points and Authorities.
19

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **STATEMENT OF FACTS**

4 1. On or around spring of 2018, the Debtor took his 2009 BMW X5 (the “automobile”)
 5 to Bavarian to get it repaired.

6 2. The Debtor had experienced an engine malfunction and had the automobile towed
 7 to Bavarian’s place of business at 2417 North 16th Street, Phoenix, Arizona 85006.

8 3. After keeping the automobile for a few days, Bavarian informed the client that they
 9 could not fix the automobile and he needs to take it to the BMW dealership.

10 4. Bavarian’s bill for its services totaled \$1,000.00.

11 5. During this time, the Debtor was going through some financial hardship and could
 12 not afford to pay Bavarian’s bill in order to move the car to the BMW dealership.

13 6. On January 16, 2020, Debtor filed the instant Chapter 13 bankruptcy, bearing case
 14 number 20-10243- btb (the “Bankruptcy”).

15 7. Bavarian was included in the Bankruptcy, as seen below:

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17
 18 Bavarian Motors
 19 2417 North 16th Street
 20 Phoenix, AZ 85006

21 8. Bavarian was provided notice of the Bankruptcy through the Court’s BNC notification
 22 system. See Docket No. 10.

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United States Bankruptcy Court
District of Nevada

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In re:
STEVE PANDI
DebtorCase No. 20-10243-btb
Chapter 13

4

CERTIFICATE OF NOTICE

5

District/off: 0978-2

User: pereaeq
Form ID: 3091Page 1 of 2
Total Noticed: 40

Date Rcvd: Jan 17, 2020

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Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on
Jan 19, 2020.

db +STEVE PANDI, 2601 S PAVILION CENTER, LAS VEGAS, NV 89135-1806
 11054374 +ADT Monitoring, 1501 Yamato Road, Boca Raton, FL 33431-4438
 11054373 +Ad Astra Recovery, Acct No xxx3229, 7330 W 33rd Street North, Wichita, KS 67205-9369
 11054372 +Ad Astra Recovery, Acct No xxx3229, 7330 West 33rd Street North, Suite 118,
 Wichita, KS 67205-9370
 11054376 +Arizona Discount Movers, 930 S. 67th Avenue, Phoenix, AZ 85043-4431
 11054380 +Bank of America, Acct No xxxxxxxxxxxx7099, 4909 Savarese Circle, Tampa, FL 33634-2413
11054381 +Bavarian Motors, 2417 North 16th Street, Phoenix, AZ 85006-1829
 11054395 +Credit Control Corporation. Acct No xxxxxxx1028. 11821 Rock Landing Drive.

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9. On January 27, 2020, the Debtor left a message with Bavarian's legal department,
 10 asking to get his automobile back as he was now in bankruptcy.

11. On February 12, 2020, Bavarian's legal department was contacted again to inform them
 12 that they had been noticed and they need to release the automobile to the Debtor.

13. Bavarian responded by stating that the Debtor owed it \$20,000.00, and it would not
 14 release the automobile until it knew how it was going to get paid.

15. Bavarian was informed that because the Debtor was in bankruptcy they would need to
 16 submit its proof of claim to the Bankruptcy Court like Debtor's other creditors.

17. On February 13, 2020, Bavarian was contacted again, and this time it was willing to
 18 release the car to the Debtor but required police presence.

19. On February 18, 2020, Bavarian stated that per its attorney it did not have to release
 20 the automobile, however, if the Debtor sends a tow-truck, the tow-truck driver will have to move
 21 other cars to get to Debtor's automobile, as Bavarian would not assist in moving the other cars.

22. Notwithstanding the Bankruptcy, Bavarian has continued engaging in efforts to collect
 23 the debt and creating hurdles for the Debtor to retrieve the automobile.

16. At this point, Bavarian is purposefully retaliating against Debtor for filing this Chapter 13 bankruptcy.

17. The emotional distress that Bavarian has caused Debtor is significant. The Bankruptcy Code allows Debtor to retrieve his automobile, however, Bavarian to date has ignored all of Debtor's requests to retrieve his automobile.

Although it is difficult to ascertain the damages Debtor has suffered as a result of Bavarian's conduct into a monetary figure, Debtor believes it is at least \$5,000.00 because Bavarian has intentionally ignored the Bankruptcy Code and retaliated against the Debtor for filing this Chapter 13 case. Debtor has had out of pocket costs in combating Bavarian's conduct. Further, the Debtor faces additional expenses in removing the automobile.

II.

LEGAL ANALYSIS

18. Bavarian's actions were willful and done intentionally, knowing that Debtor had filed bankruptcy, in complete defiance of the Bankruptcy laws. 11 U.S.C. § 362(a) specifically states as follows:

Except as provided in subsection (b) of this section, a petition filed under §301, §302 or §303 of this title, or an application filed under section 5(a) (3) of the Securities Investor Protection Act of 1970 (15 U.S.C. §78eee(a)(3)), operates as a stay, applicable to all entities, of...

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title...

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.

1 19. Pursuant to 11 U.S.C. §362(c) “The stay of an act against property of the estate
 2 under subsection (a) of this section continues until such property is no longer property of the
 3 estate” and “the stay of any other act . . . continues until the earliest of—(A) the time the case is
 4 closed; (B) the time the case is dismissed; or (C) . . . the time a discharge is granted or denied.”

5 20. Further, 11 U.S.C. § 362(k) provides that “[a]n individual injured by any willful
 6 violation of a stay provided by this section shall recover actual damages, including costs and
 7 attorney's fees, and...punitive damages.”

8 21. Bavarian’s intentional and willful violation of the automatic stay have caused injury
 9 and damage to Debtor and Debtor is entitled to recover actual damages and attorney's fees and
 10 costs. Substantial punitive damages should also be entered against Bavarian in an amount deemed
 11 appropriate by the Court due to its grievous and deliberate conduct designed to deprive Debtor of
 12 the protection and benefits of the automatic stay.

13 22. Specifically, Debtor’s damages include his inability to get access to his
 14 automobile that he would otherwise would have been able move to the BMW dealership to get
 15 repaired.

16 23. Debtor is currently paid \$37.50 per hour, and believes this is a reasonable value
 17 of his time in having to deal with Bavarian’s retaliation.

18 24. More importantly, Bavarian’s egregious conduct has caused Debtor to suffer
 19 severe emotional distress. Debtor has suffered panic attacks, sleepless nights, loss of appetite,
 20 and anger and frustration.

21 25. Debtor believes the emotional distress and turmoil exceeds \$25,000.00.

22 26. Finally, because of Bavarian’s willful, malicious, and retaliatory actions the
 23 Bankruptcy Court should enter an award of punitive damages against Bavarian.

27. Debtor requests that any order for the payment of money against Bavarian be reduced to a judgment that may be enforced pursuant to Federal Rule of Bankruptcy Procedure (“FRBP”) 7069. FRBP 9014(c) makes FRBP 7069 applicable in contested matters.

A. CONCLUSION

For the foregoing reasons, Debtor requests an order determining that Bavarian willfully violated the automatic stay and enter a judgment against Bavarian, in an amount shown at an evidentiary hearing or prove-up hearing for:

1. Reasonable attorneys fees and costs;
 2. Actual damages, including emotional distress;
 3. Punitive damages; and
 4. Such other and further relief which the Court deems just and proper.

Dated: March 25, 2020

/s/George Haines, Esq.
George Haines, Esq.
Attorney for Debtor